IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.412 OF 2005

Ramjas Ramraj Upadhyay ...Appellant
Vs.
Mahanagar Telephone Nigam Ltd. ...Respondent

Mr.Anil Singh with Mr.D.R.Shah for the Appellant
Mr.Rajguru for the Respondent.

CORAM: A.S.OKA, J.
DATED: MAY 3,2005.

P.C.:

1. Admit. Respondent waives service. Taken up for hearing forthwith.

2. By impugned order, the learned Trial Judge has declined to grant ad-interim relief in favour of the Appellant-Plaintff. The prayer for ad-interim injunction relates to structure admeasuring 380 sq.ft. and access road passing through the land C.T.S.No.1439 of village Eksar, Borivali.

3. The learned Trial Judge held that the land in question was acquired for public purpose and Award has been made on 23rd July 1996. The learned Advocate for the Appellant pointed out that it is conceded by the Respondent that the road which is claimed by the Appellant is beyond the boundary of the acquired land. He stated that in so far as structure is concerned though the land below structure might have been acquired for the benefit of Life Insurance Corporation, the said Corporation has no objection if the structure is retained.

4. The learned Counsel for the Respondent contended that

some portion of the road claimed by the Appellant falls in the acquired property and therefore, ad-interim relief cannot be granted.

5. If the land below the suit structure is acquired under the provisions of Land Acquisition Act, 1894, and if the possession has been taken under Section 16 of the said Act of 1894 way back in the year 1986-87, ad-interim injunction cannot be granted for protecting the structure.

6. As far as the road is concerned, in paragraph No.11 of the Affidavit of the Respondent it is stated thus :

> "11. The right of way alleged to have been granted to the Appellant vide L.I.C.'s letter dated 20-11-1978 and receipt dated 10-11-1978 (page No.48 Exh.E) (on payment of Rs.19,360.00) is the road beyond the Western boundary of the acquired land and C.T.S.No.1439-A-2 (which is S.No.203, Hissa No.2) admeasuring 4123 sq.mt. and the same connects the Plaintiff's property at C.T.S.No.1444 (S.No.203, Hissa No.1) (which is on the southern side of the acquired land) with Jeevan Bima Nagar Colony on the North side of the acquired land."

In view of what is stated in Affidavit, ad-interim relief will have to be granted in respect of the access. Whether a part of access claimed by the Appellants falls within the limits of acquired land or not can be considered at the time

of hearing of Notice of Motion on the basis of Affidavits and documents on record.

7. Hence, the Appeal must succeed and the same is partly allowed by passing the following order :

i) Till the disposal of the Notice of Motion No.1133 of 2005 the Respondent will maintain status quo as of today in respect of the access road described in prayer clause (a) of the Notice of Motion.

ii) It is made clear that no ad-interim relief is granted as regards the structure having area of 380 sq.ft. which is described in prayer clause (a) of the Notice of Motion.

iii) The Notice of Motion will be decided by the Trial Court uninfluenced by the order passed in this Appeal from Order.

iv) All contentions of the parties in the pending Notice of Motion are expressly kept open.

v) It is made clear that the grant of ad-interim relief in respect of the road will not prevent the Respondent from getting the disputed property surveyed from the competent Survey Officer under the provisions of Maharashtra Land Revenue Code, 1966.

. Parties to act upon an authenticated copy of this order.

Judge.